IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8619 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANABHAI KESHURBHAI PATEL
Versus
ADDITIONAL, MAMLATDAR AND AGRICULTURAL LAND TRIBUNAL & OTHERS

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Appearance :
MR KAMAL SOCHITRA for Petitioner.
MR SATYAM CHHAYA, ASST. GOVERNMENT PLEADER for Respondents : 1 -3

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/05/2007

ORAL JUDGMENT

Shri Kamal Sochitra, learned counsel for the petitioner. Mr. Satyam Chhaya, learned Assistant Government Pleader for respondents No.1 to 3.

By this writ application, the petitioner seeks to challenge the orders passed by the Mamlatdar, Deputy Collector and the Gujarat Revenue Tribunal under section 84-C of the Bombay Tenancy and Agricultural Lands Act, directing restoration of possession of land Survey No. 323 in favour of respondent No.4.

The shorts facts necessary for disposal of the present writ application are that land survey No. 323 belonged to one Majmudar Vishnuprasad Chhagganlal and was cultivated by Dadabhai Bhaijibhai [uncle of the present petitioner]. Vide order dated 09.03.62 passed in Case No. 22 of 1961, the said Dadabhai Bhaijibhai was held to be a tenant and was deemed as a purchaser. He was required to pay a sum of Rs.750/- with 4.1/2% interest within seven weeks from the date of the order for conferral of the rights upon him. It appears that the money was accordingly paid and the said Dadabhai Bhaijibhai was recorded as deemed purchaser.

On 26.02.69, the said Dadabhai Bhaijibhai left for his heavenly abode. Therefore, entry No. 487 dated 26.03.69 was made in favour of Purshottambhai Dadabhai and Patel Rambhai Dadabhai. However, the present petitioner, Shanabhai Keshurbhai Patel, nephew of Dadabhai Bhaijibhai, made some application to the authority/Talati-cum-Mantri for correction in the entry. Purshottambhai Dadabhai, Rambhai Dadabhai and widow of deceased Dadabhai Bhaijibhai appeared before the

authority, consented to the mutation of the petitioner's name. Accordingly, entry No. 3042 was made on 11.06.69.

It appears that things were going on smoothly, but somewhere in the year 1978, proceedings under section 84-C of the Tenancy Act was registered by the Mamlatdar in relation to land Survey No. 393 on the allegation that the land was unauthorisedly sold in favour of one Dalwadi partnership firm. After realizing the mistake that the petitioner's land was survey No. 323, proceedings relating to survey No. 393 were dropped in 1978.

Even after the said proceedings were dropped, no further action was taken by any authority either under section 84-C of the Tenancy Act or for violation of any other provisions. In the year 1991, the Additional Mamlatdar and Agricultural Land Tribunal initiated proceedings under section 84-C of the Tenancy Act and a final order came to be passed on 30.08.93. Under the order, the petitioner was required to restore possession in favour of respondent No.4, i.e. his first cousin. The petitioner, being aggrieved by the said order directing restoration of possession in favour of respondent No.4 preferred an appeal. The appeal came to be dismissed on 11.05.94. The said order came to be challenged before Gujarat Revenue Tribunal, but the Revision was dismissed on 21.07.95.

Being aggrieved by the said orders, the petitioner is before this Court.

Shri Sochitra, learned counsel for the petitioner, placing reliance upon the judgment of the Supreme Court

in the matter of Raghav Natha reported in 10 GLR 998 submits that if the rights of the parties were crystallized and settled in the year 1969, then the dead cannot be exhumed for making their postmortem almost after 22 years of the event. His submission is that from the proceedings relating to survey No. 393, at least it can be presumed that the authorities knew about survey No. 323 and the mutation of the petitioner's name. His further submission is that the authorities erred in holding even after lapse of 22 years, they could reopen the subject.

Shri Satyam Chhaya, learned Assistant Government Pleader however submitted that if the orders were passed or actions taken are patently illegal and tantamount to nullity, then such actions or orders can be set aside or nullified at any time because those orders/actions have no place to stand where the parties are governed by rule of law.

Undisputedly, the proceedings in relation to survey No. 393 were drawn under section 84-C of the Tenancy Act. The proceedings had to be withdrawn but in any case, from that, it would clearly appear that the authorities knew that survey No. 323 was mutated in the name of the present petitioner. If in the year 1978 the authorities did not take any action, then at least from the date of their knowledge, they should have taken some action within a short while or within a reasonable time. The respondent Additional Mamlatdar came out of hibernation in the year 1991 and registered the proceedings under section 84-C of the Tenancy Act.

In the matter of Raghav Natha [supra], the Supreme Court has clearly observed that if no time for taking up the matter in revision or a suo motu action is fixed under the statute, then such authority is required to take an action at its earliest, and preferably within a period of six months, one year or two years, looking to the circumstances of the case and the provisions of the law involved in the matter. When a matter is sought to be re-opened almost after a period of 22 years, then judgment in the matter of Raghav Natha would provide absolute protection and indefeasible shield to such a person. The defence of delay would become impeccable and the State would not allow to pierce such a defence.

The revenue authorities, when they exercise their quasi-judicial function are required to go through the law. They must understand the true spirit of law. They are not simply paid servants of the Government nor are they required to oblige the Government by passing orders in favour of the Government. When illegal orders are passed by the revenue officers/authorities, then it would lead to only one presumption that they are trying to oblige the Government and are trying to be in the good books of the Government by telling the Government that they don't do anything contrary to the interest of the Government. Such officers, in the opinion of this Court, being public servants, should not forget that they are servants of the public and that their salary is paid from the money paid by the public. On one side, in the hirerachy, they are answerable to the superior but in the judicial system, they are answerable to the litigants before the Court. If the State is party-litigant before the smallest revenue authority, then such authority

should not work as a humble and obedient servant of the government but should exercise his discretion and judicial approach in accordance with law.

The orders passed by the respondents are hereby quashed and the proceedings initiated under section 84-C of the Tenancy Act are dropped.

The petition is allowed. No costs.

[R.S.GARG, J.]

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